

REMARKS

The Office Action dated April 28, 2009, has been received and carefully considered. In this response, claims 1, 3-5, 7-8, 10-16, and 18-21 have been amended, claim 24 has been added, and claims 2 and 9 have been cancelled without prejudice. No new matter has been added. Entry of the amendments to the claims 1, 3-5, 7-8, 10-16, and 18-21, the addition of claim 24, and the cancellation of claims 2 and 9 without prejudice is respectfully requested. Reconsideration of the current rejections in the present application is also respectfully requested based on the following remarks.¹

I. THE EXAMINER INTERVIEW

At the outset, the undersigned thanks the Examiner for the courtesies extended during the interview conducted on July 21, 2009. The Examiner indicated that proposed amendments to claim 1 would be patentable over the cited references. The proposed

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

amendments are reflected in the claim amendments presented above.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 1-5, 7-16, AND 18-23

On pages 2-5 of the Office Action, claims 1-5, 7, 8, and 18-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0048793 to Pochon, et al. ("Pochon") in view of U.S. Patent Publication No. 2004/0083385 to Ahmed, et al. ("Ahmed") and U.S. Patent Publication No. 2004/0093521 to Hamadeh, et al. ("Hamadeh"). On pages 6-7, claims 9-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pochon, Ahmed, and Hamadeh, in further view of U.S. Patent Publication No. 2004/0093513 to Cantrell, et al. ("Cantrell"). These rejections are hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary

considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claim 1, the Examiner asserts that the claimed invention would have been obvious in view of Pochon, Ahmed, and Hamadeh. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 1 to more specifically define the claimed invention, and specifically those features that further differentiate the claimed invention from Pochon, Ahmed, and Hamadeh, as well as the other cited references. In particular,

Applicant respectfully submits that Pochon, Ahmed, and Hamadeh, fail to disclose, or even suggest, a method including at least "performing a query to determine configuration information associated with how a destination node to which the two or more fragments are addressed is configured to reassemble overlapping fragments. . . ," as presently claimed.

In contrast, Pochon discloses a method for data normalization for a network intrusion detection system. Network fragments are received and "registered in the normalization table." Pochon, [0052]. The method of Pochon appears to receive packets, and compare the packets to "registered fragments." Fragments are redirected, discarded, or forwarded based on the table entries. See Pochon, Figure 7.

FIGURE 7

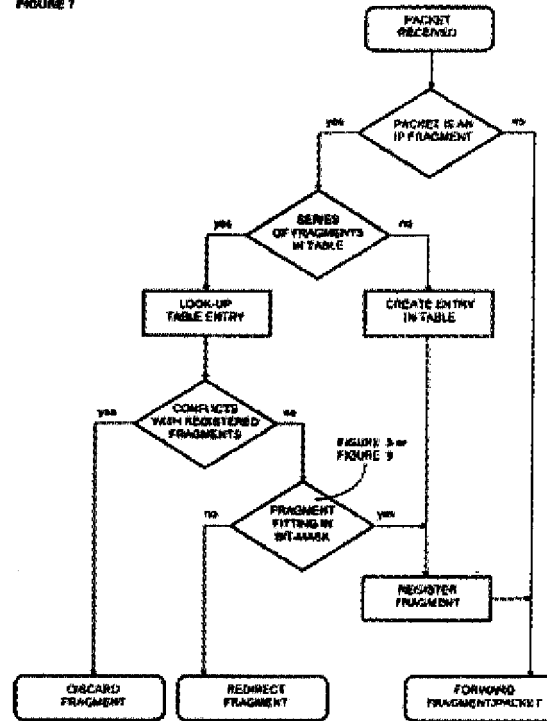


Figure 1 - Pochon Figure 7

Pochon does not disclose "performing a query to determine configuration information associated with how a destination node to which the two or more fragments are addressed is configured to reassemble overlapping fragments," as recited in claim 1.

Ahmed discloses a method for dynamically loading a security algorithm based on network conditions. Ahmed, [0001]. Incoming packets are monitored. If a security attack is detected, the network processor determines if an appropriate algorithm is available, or an algorithm best suited to the particular attack if no appropriate algorithm is found. Ahmed, [0021]. Ahmed does not disclose "performing a query to determine configuration

information associated with how a destination node to which the two or more fragments are addressed is configured to reassemble overlapping fragments," as recited in claim 1.

Hamadeh discloses packet traceback and marking strategies. Packets are marked to allow for a traceback to a source of traffic after an attack. See Hamadeh, [0026]. Hamadeh does not disclose "performing a query to determine configuration information associated with how a destination node to which the two or more fragments are addressed is configured to reassemble overlapping fragments," as recited in claim 1.

As discussed above, Applicant respectfully submits that Pochon, Ahmed, and Hamadeh, alone or in combination, fail to disclose at least "performing a query to determine configuration information associated with how a destination node to which the two or more fragments are addressed is configured to reassemble overlapping fragments" as recited in claim 1, and that therefore claim 1 should be allowable over Pochon, Ahmed, and Hamadeh.

Applicant would like to remind the Examiner that, as stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974). That is, "[a]ll words in a claim must be considered in

judging the patentability of that claim against the prior art."
In re Wilson, 424 F.2d 1382 (CCPA 1970).

Regarding claims 3-5, 7, and 8, these claims are dependent upon independent claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since independent claim 1 should be allowable as discussed above, claims 3-5, 7, and 8 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 7 recites a method of claim 1 wherein "performing a query includes querying the destination node."

Applicant respectfully submits that the aforementioned obviousness rejection of claims 10-16 has become moot in view of the deficiencies of the primary references (i.e., Pochon, Ahmed, and Hamadeh) as discussed above with respect to independent claim 1. Claim 9, which has also been rejected under this theory, has been canceled without prejudice. That is, claims 10-16 are dependent upon independent claim 1 and thus inherently incorporate all of the limitations of independent claim 1. Also, the secondary reference (i.e., Cantrell) fails to

disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 1. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 1. Accordingly, claims 10-16 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 1. Moreover, claims 10-16 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

Regarding claims 20 and 21, these claims, while of different scope than claim 1, recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 20 and 21. Accordingly, Applicant respectfully submits that claims 20 and 21 should be allowable over Pochon, Ahmed, and Hamadeh for at least the same reasons as set forth above with respect to claim 1.

Regarding claims 22 and 23, these claims are dependent upon independent claim 21. If an independent claim is nonobvious

under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since independent claim 21 should be allowable as discussed above, claims 22 and 23 should also be allowable at least by virtue of their dependency on independent claim 21. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 21 recites a system, "wherein performing a query includes querying the destination node."

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 1, 3-5, 7-8, 10-16, and 18-23 be withdrawn.

III. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

U.S. Patent Application No.: 10/775,537

Attorney Docket No.: 68865.001203

Client Reference No.: 200310061110

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By:


Thomas E. Anderson

Registration No. 37,063

TEA:JBB

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: 7/28/09